

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte UWE HEITMANN, SONKE HORN, NIKOLAOS GEORGITSIS,
HEINZ-CHRISTEN LORENZEN, STEFFEN ROCKTASCHER, STEPHAN WOLFF,
WOLFGANG STEINIGER, GERD STROHECKER, ANDREAS RINKE,
and HANS-HERBERT SCHMIDT



Appeal No. 2005-1093
Application No. 10/058,200

HEARD: June 7, 2005

Before PATE, NASE, and CRAWFORD, Administrative Patent Judges.
CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 90 to 96, 98 to 101, 104 to 109, 112, 113, and 115 to 117, which are all of the claims pending in this application. Claims 1 to 66 have been canceled. Claims 67 to 89 are allowable and claims 97, 102, 103, 110, 111, and 114 are objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The appellants' invention relates to a method and arrangement for producing compound filters for products in the tobacco processing industry (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The prior art reference

The prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Reynolds	UK 1,212,963	Nov. 18, 1970
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The rejection

Claims 90 to 96, 98 to 101, 104 to 109, 112, 113, 115 to 117 stand rejected under 35 U.S.C. § 102 or 103 as being unpatentable over Reynolds.¹

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the answer (mailed August 27, 2004) for the examiner's complete reasoning in support of the rejection, and to the brief (filed July 28, 2004) and reply brief (filed October 26, 2004) for the appellants' arguments thereagainst.

¹ The examiner has withdrawn the rejection under 35 U.S.C. § 112, first paragraph of claims 67 to 89.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art reference, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The examiner has rejected of claims 90 to 96, 98 to 101, 104 to 109, 112, 113, and 115 to 117 under 35 U.S.C. § 102 as being anticipated by Reynolds or in the alternative under 35 U.S.C. § 103 as being unpatentable over Reynolds.

To support a rejection of a claim under 35 U.S.C. § 102, it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

The examiner is of the opinion that Reynolds discloses the invention as claimed. In regard to the limitation in claim 90 of a "single conveyor. . . for supplying the filter tubes to the processing stations," the examiner states:

Regarding the one conveyor and multiple processing stations, Reynolds shows conveyor 16 moving the filter tubes which are first stopped by mechanism 20 and then cut by cutting means 22. Since the filter tubes are stopped and cut, the examiner is interpreting the stopping mechanism to

be one processing station and the cutting station to be another processing station.

Furthermore, means 28 is transporting the filter tubes to filler means 30 and subsequent processing stations such as cap inserting station 38. Since there are two filling hoppers as shown in figure 1, each filling hopper is read on a processing station which reads on multiple stations as claimed. [Answer at page 4.]

We agree with the appellants that a stopping station is not a processing station. In addition, we agree with the appellants that the stop 20 is part of the cutting station which includes cutting means 22. Stop 20 holds the tubes in place while the tubes are cut by the cutting means 22.

However, we agree with the examiner that the means 28 is a conveyor that conveys the tubes to a plurality of processing stations, each of the hoppers being a processing station.

In view of the foregoing, we will sustain the rejection as it is directed to claim 90 as being anticipated by Reynolds. We will likewise sustain this rejection as it is directed to claims 104 to 106 as these claims stand or fall with claim 90 (brief at page 8).

The appellants argue that claim 91 includes a rotating device for rotating the tubes and that this feature distinguishes the subject matter of claim 91 over Reynolds. We agree with the examiner that Reynolds discloses a rotating drum 28 which rotates on a vertical axis and thus discloses a rotating device as recited in claim 91. Therefore we will sustain the rejection as it is directed to claim 91.

The appellants also argue that Reynolds does not disclose a conveyor which comprises a continuously circulating conveyor in which the filter tubes are conveyed cross-axially as recited in claim 92. We agree with the examiner that Reynolds does disclose a conveyor 28 which moves the filter tubes cross-axially as recited in claim 92. Therefore we will sustain the rejection as it is directed to claim 92.

The appellants argue that Reynolds does not disclose a processing station which comprises at least one filtering material feeding station as recited in claim 93 or a filtering material insertion station as recited in claim 94. We agree with the examiner that the hoppers 30 feed filtering material into the filter tubes and are each a filtering material insertion station. Therefore we will sustain the rejection as it is directed to claim 93 and 94.

The appellants argue that Reynolds does not disclose a process as recited in claim 90 which comprises at least one removal station as recited in claim 95. The examiner relies on the Reynolds removal station 92 for disclosure of the removal station. We agree with the appellants that Reynold does not disclose a removal station which is "one of the processing stations" as recited in claim 95. As we stated above, we are of the opinion that the drum 28 is the single conveyor which supplies the filter tubes to the processing stations. Drum 28 does not convey the filter tubes to the removal station 92. Therefore, in our view, the subject matter of claim 95 is not anticipated by Reynolds.

In regard to the obviousness rejection, we note that the examiner has not explained how the subject matter of claim 95 would have been obvious in view of the disclosure of Reynolds, therefore, we will not sustain this rejection.

The appellants argue that Reynolds does not disclose a process as recited in claim 90 which comprises at least one heating station as recited in claim 96. The examiner relies on Reynolds thermosetting adhesive on disc 42 (page 3, lines 125 to 130) for teaching the heating station limitation. We agree with the appellants that Reynold does not disclose a heating station which is "one of the processing stations" which is recited in claim 90. As we stated above, we are of the opinion that the drum 28 is the single conveyor which supplies the filter tubes to the processing stations. Drum 28 does not convey the filter tubes to the disc 42. Rather, the tubes are conveyed to disc 42 by drum 38 (Fig. 5c). Therefore, in our view, the subject matter of claim 96 is not anticipated by Reynolds.

In regard to the obviousness rejection, we note that the examiner has not explained how the subject matter of claim 96 would have been obvious in view of the disclosure of Reynolds, therefore, we will not sustain this rejection.

The appellants argue that Reynolds does not disclose the subject matter of claims 98 and 99. We agree with the examiner that Reynold discloses a lever element 32 with a bore therein 32a which slides to dispense granular filtering material (Fig. 4). Therefore, we will sustain the rejection as it is directed to claims 98 and 99.

Appellants also argue that Reynolds does not disclose the subject matter of claim 100. We agree with the examiner that Reynolds discloses a first transfer means (30a, 30) for inserting filtering material into filter tubes. Therefore, we will sustain this rejection as it is directed to claim 100.

Appellants further argue that Reynolds does not disclose the subject matter of claim 101. We agree with the examiner that Reynolds discloses a second transfer means (32) that stops the first transfer means. Therefore, we will sustain this rejection as it is directed to claim 101.

Claims 107 and 115 recite that the processing stations include one processing station for inserting at least two portions of the filtering materials into the one filter tube. In regard to the rejection of claims 107 and 115, the examiner recites:

... Reynolds shows four hopper means 30 and lower hopper means not identified with numerals as shown in figure 1. These hoppers insert portions of filtering materials into a filter tube. Each hopper inserts a portion and therefore the combined hoppers insert two portions as claimed in a single operational stop. The entire operation reads on a single step as claimed. [Answer at page 5.]

We agree with appellants that Reynolds does not disclose that a single conveyor conveys the filter tubes to a processing station which inserts two portions of filtering material into the filter tubes in a single processing station. Although the two sets of hoppers may fill filter tubes depicted at section A and section B in Reynolds figure 1, these two sets of hoppers do not constitute the same processing station. In fact, as we

have discussed above, the two hoppers depicted at section A of Figure 1 are considered two processing stations.

In view of the foregoing, we will not sustain the rejection of claim 107, and claims 108, 109, 112, 113 dependent therefrom and claim 115 and claims 116 and 117 dependent therefrom.

In regard to the obviousness rejection, we note that the examiner has not explained how the subject matter of claim 107 and 115 would have been obvious in view of the disclosure of Reynolds, therefore, we will not sustain this rejection. We will likewise not sustain the rejection as it is directed to claims 108, 109, 112, 113 dependent on claim 107 and claims 116 and 117 dependent on claim 115.

In conclusion, we affirm the rejection as directed to claims 90 to 94, 98 to 101 and 104 to 106, and we reverse the rejection as directed to claims 95, 96, 107-109, 112, 113, 115 to 117.

AFFIRMED-IN-PART

MURRIEL E. CRAWFORD
Administrative Patent Judge

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